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2. The Opposing Parties oppose LMM's Petition on the grounds that (a) the tolling provisions should be liberalized and (b) that the same precedent which precludes the retroactive application of the tolling provisions also precludes the retroactive application of the new rules to outstanding permits. In support of their first argument, the Opposing Parties submit anecdotal evidence intended to bolster their claim that the tolling provisions should be liberalized. However, the evidence presented actually supports LMM's position. In each instance the evidence offered by the Opposing Parties merely serves to emphasize the fact that the tolling provisions have been disconnected from the critical touchstone: the permittee's control or lack of control over the circumstances precluding construction. Although LMM has insufficient knowledge of the facts of the cases cited by the Opposing Parties to offer any definitive analysis, it would appear from the Opposing Parties' account that each of these cases involve circumstances beyond the control of the permittee, which would have warranted an extension under the prior rule, provided the permittee had acted with diligence.

3. Reduced to their essence, the arguments of LMM and the Opposing Parties focus upon different aspects of the same issue. In arguing that the tolling provisions are too lax, LMM's essential concern is that they would permit tolling under circumstances which are within the permittee's control and, thus, give rise to manipulation and abuse and otherwise disserve the public interest. In arguing that they are too strict, the Opposing Parties contend that the tolling provisions would fail to apply even to circumstances that clearly are beyond their control, unless those circumstances fall squarely within the limited categories identified by the Commission. <sup>1</sup>/ Both parties have valid concerns and the deficiencies identified by each arise from

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1. By law the Commission is precluded from canceling a permit where the failure to construct is due to circumstances beyond the permittee's control and, thus, the tolling provisions lawfully could not be applied in the manner described by the Opposing Parties. See: 47 USC 319(b).

the same problem: the Commission's failure to assure any meaningful connection between the tolling provisions and the permittee's control over the circumstances precluding construction. As such, the tolling provisions fail to protect the interests that were served by the third prong of the former "one in three" rule, i.e., assuring that the circumstances precluding construction be clearly beyond the control of the permittee and that the permittee have acted with diligence in taking all reasonable steps to remove the impediment.

4. Were the Commission to revise the tolling provisions to make tolling dependent upon a showing consistent with the criteria required to be met under the old rule, i.e., lack of control and diligence, the problems identified by both LMM and the Opposing Parties would be eliminated. Accordingly, the tolling provisions should be revised to apply where: (a) construction is precluded by circumstances which are demonstrated to be clearly beyond the control of the permittee and (b) the permittee can demonstrate that it has acted with diligence and taken all reasonable steps possible to overcome the impediment.

5. With regard to the Opposing Parties' second argument, there appears to be merit to the Opposing Parties' contention that any application of the new rules to outstanding permits is impermissibly retroactive. Furthermore, a decision by the Commission on reconsideration not to apply the new rules retroactively to outstanding permits would eliminate LMM's concerns regarding retroactive application of the new tolling provisions, as well as addressing the legitimate concerns of the Opposing Parties.

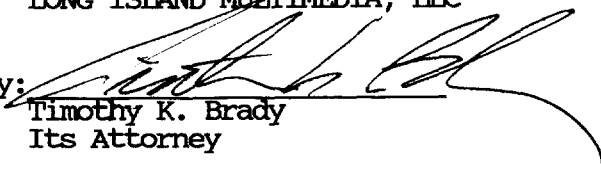
6. The primary focus of LMM's Petition, however, is with the newly adopted tolling provisions and the need to assure that they are predicated upon a showing of circumstances beyond the permittee's control and due diligence on its part, regardless of whether they are prospectively or retroactively applied. In the absence of such limitations, the newly adopted tolling provisions cannot be applied consistent with the public interest, whether

prospectively or retroactively.

Respectfully Submitted

LONG ISLAND MULTIMEDIA, LLC

By:



Timothy K. Brady  
Its Attorney

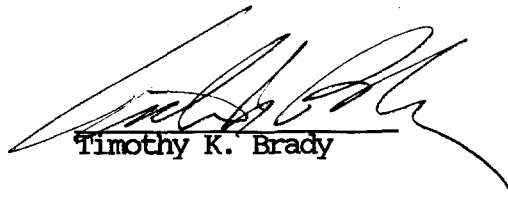
P.O. Box 986  
Brentwood, TN 37027-0986  
(615) 371-9367

March 4, 1999

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have, this 3rd day of March, 1999, served a copy of the enclosed Reply to Opposition to Petition for Reconsideration by First Class mail, postage prepaid upon the following:

Barry A. Friedman, Esq.  
Andrew S. Hyman, Esq.  
Thompson, Hine & Florry  
1920 N Street, NW, Suite 800  
Washington, DC 20036  
(Counsel to Aspen FM, Inc.,  
Calipatria Broadcasting Company, LLC,  
Rancho Palos Verdes Broadcasters, Inc.  
and Entravision Holdings, LLC)



Timothy K. Brady